

MERRITT O. CHANCE

v.

FEDERAL AVIATION ADMINISTRATION

Docket No.

DC035199003

OPINION AND ORDER

I. BACKGROUND

The appellant, Merritt O. Chance, petitioned the Washington, D.C., Field Office of the Merit Systems Protection Board for appeal of his detail from the GS-15 position of Supervisory Airport Planning Specialist, Office of Airport Programs of the agency, the Federal Aviation Administration. He alleged that his detail to another GS-15 position at the same pay level with an unclassified set of duties and responsibilities was part of a reorganization, that reduction in force (RIF) procedures under 5 C.F.R. part 351 were not correctly applied, and that his detail was the result of age discrimination.

In an initial decision dated May 18, 1979, the presiding official dismissed the appeal for lack of jurisdiction. He found that RIF procedures must be followed in connection with personnel actions effected as part of a reorganization only when there is a release of an employee from his or her competitive level. He found, further, that the appellant was not released from his competitive level because, as with all details, he remained the official incumbent of his most recent position while on detail. The presiding official concluded, therefore, that there was no requirement that RIF procedures be followed in this case.

In his petition for review, the appellant asserted that his appeal was erroneously dismissed. Attached to his petition were a copy of a notice concerning the appellant's administrative reassignment from the Office of Airports Programs in Washington, D.C., to the Airport Division in Anchorage, Alaska, as well as a list of the persons in his former office who were being reassigned, their ages, and their new positions, both of which were offered as new and material evidence.

II. DISCUSSION

In the appeal of *Chleapas v. Department of Health, Education, and Welfare*, 1 MSPB 464 (1980), we held that a detail, even to a lower graded position in a different competitive level, does not constitute an appealable action. Moreover, in *Brunjes v. Department of the Army*, 2 MSPB 356 (1980), we held that the reassignment of an employee to a vacant position in a different competitive level does not require the implementation of RIF procedures if the employee retains the same grade and pay. In this case, RIF procedures are not applicable because the appellant is merely serving in a detail and he has suffered no loss in grade or pay. He has not yet been affected by any personnel action

which would require or permit an agency to use RIF procedures. 5 C.F.R. 351.201(a). We conclude, therefore, that the presiding official properly dismissed this appeal for lack of jurisdiction. 5 C.F.R. 351.901.

The notice of the appellant's administrative reassignment to Alaska, attached to the petition for review, is not material to the detail appealed here. The appellant's reassignment was the basis of a second appeal to the Board, which was dismissed without prejudice because of a prior discrimination complaint filed with the agency in connection with the same action. The list of persons in the appellant's former office who were being reassigned, their ages, and their new positions, also attached to the petition, is material only to the appellant's claim of age discrimination, which we cannot entertain without independent appellate jurisdiction. *Smith v. Department of Health, Education, and Welfare*, 3 MSPB 3 (1980).

III. CONCLUSION

Accordingly, the petition for review of the initial decision dated May 18, 1980, is hereby DENIED for failing to meet the criteria set forth at 5 C.F.R. 1201.115.

This is the final decision of the Merit Systems Protection Board in this appeal. The initial decision shall become final five days from the date of this order. 5 C.F.R. 1201.113(b).

The appellant is hereby notified of the right to seek judicial review of the Board's action as specified in 5 U.S.C. 7703. A petition for judicial review must be filed in the appropriate court no later than thirty (30) days after the appellant's receipt of this order.

For the Board:

RONALD P. WERTHEIM.

WASHINGTON, D.C., April 10, 1981